IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JASON ERIC RASMUSSEN, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12486 Trial Court No. 1KE-15-074 CR MEMORANDUM OPINION No. 6390 — October 5, 2016

Appeal from the Superior Court, First Judicial District, Ketchikan, William B. Carey, Judge.

Appearances: Jane B. Martinez, Law Office of Jane B. Martinez, LLC, and Richard Allen, Public Advocate, Anchorage, for the Appellant. Benjamin J. Hofmeister, Assistant District Attorney, Ketchikan, and Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock, Superior Court Judge.[*]

PER CURIAM.

[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

Pursuant to a plea agreement, Jason Eric Rasmussen pleaded guilty to third-degree assault[1] based on allegations that he forced his way into his former girlfriend's home and punched her repeatedly in the face, causing a concussion and other injuries that required hospitalization.

As part of the plea agreement, Rasmussen stipulated to the statutory aggravator AS 12.55.155(c)(21) — that he had "a criminal history of repeated instances of conduct violative of criminal laws ... similar in nature to the offense for which [he was] being sentenced." Rasmussen also admitted to violating the conditions of his probation in two prior misdemeanor cases — both cases involved convictions for violating a domestic violence protective order with a different girlfriend.[2] The plea agreement left sentencing on the third-degree assault and the two petitions to revoke probation to the discretion of the sentencing judge.

As a second felony offender, Rasmussen faced a presumptive sentencing range of 2 to 4 years' imprisonment on the third-degree assault with a maximum sentence of 5 years (because of the agreed-upon aggravator).[3] Rasmussen also faced sentences of 275 days and 250 days for the two petitions to revoke probation in his misdemeanor cases.

---

[1] AS 11.41.220(a)(5). Rasmussen's prior criminal history included two convictions for fourth-degree assault under AS 11.41.230(a)(1) or (2), a predicate for criminal liability under AS 11.41.220(a)(5).

[2] AS 11.56.740(a).

[3] AS 12.55.155(c)(21); *see* AS 12.55.155(a)(1) (providing that the court may impose a sentence up to the maximum term of imprisonment after finding a factor in aggravation); former AS 12.55.125(e)(2) (2015) (providing a presumptive range of 2 to 4 years, with maximum 5 years' imprisonment, for a second felony offender convicted of a Class C felony).

At sentencing, Superior Court Judge William B. Carey found Rasmussen to be a worst offender based both on his present conduct and his prior criminal history.[4] The judge declared that Rasmussen's ongoing criminal history of violence against women was "one of the worst, if not the worst, record of assaults against women" that the judge had ever seen. The judge also observed that Rasmussen had previously participated in a domestic violence intervention program, but he appeared to have "learned nothing" from that program. The judge therefore concluded that isolation and community condemnation should be the primary considerations in fashioning Rasmussen's sentence.

The court subsequently imposed 4½ years with no time suspended on the third-degree assault conviction and imposed all of the remaining time on the two misdemeanor cases.

Rasmussen appeals, challenging his composite sentence as excessive. He also argues that the judge failed to make adequate findings to support his sentence on the two petitions to revoke probation.

We review sentencing decisions under the "clearly mistaken" standard of review.[5] This standard is founded on two concepts: "first, that reasonable judges, confronted with identical facts, can and will differ on what constitutes an appropriate sentence; second, that society is willing to accept these sentencing discrepancies, so long as a judge's sentencing decision falls within a permissible range of reasonable sentences."[6]

---

[4] *See State v. Wortham*, 537 P.2d 1117, 1120-21 (Alaska 1975) (worst-offender finding can be based on a defendant's conduct in the current case or the defendant's criminal history, or both).

[5] *Erickson v. State*, 950 P.2d 580, 586 (Alaska App. 1997).

[6] *Id.*

We have independently reviewed the record in this case and we conclude that, contrary to Rasmussen's claims, the trial court's findings applied to both the third-degree assault conviction and the petitions to revoke probation in the two misdemeanor cases. We further conclude that these findings are well supported by the record and support the sentences imposed in the misdemeanor cases.

We also conclude, based on our independent review of the sentencing record, that Rasmussen's final composite sentence was within the permissible range of sentences that a reasonable judge could impose in this case and was therefore not clearly mistaken.[7]

We accordingly AFFIRM the judgment of the superior court.

---

[7] *See McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974).